IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 868 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE TRANSPORT CORPORATION, - Petitioner(s)

Versus

DAHYALAL L.BABARIA - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner No(s).: 1.

MR RAJESH P MANKAD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 13/07/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner GSRTC has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Rajkot dated 15th March, 2004 passed in Reference (IT) No. 184 of 1997 in partly

allowing the said reference by substituting the order of punishment imposed by the departmental appellate authority and reducing it to withholding of one yearly increment with future permanent effect and not paying any arrears and/or dues on the basis of the aforesaid substitution from the date of passing of the order i.e in the year 1995 till passing of the award. The respondent workman was serving as the Driver. On the allegations that when he was on Anand – Junagadh Express Route while he was near the Octroi Naka, front side portion of his bus dashed with the one cyclist and it was alleged that there was negligence on the part of the respondent workman. On the basis of aforesaid allegation, departmental inquiry was initiated against him. It was the case on behalf of the respondent workman that in fact, there was one stationery carrier / truck and from behind that one cyclist all of sudden overtook the same and has come in front of the bus and therefore, on seeing it the respondent workman applied brakes but still the cycle dashed with front portion of the S.T.Bus and ultimately, he died. On conclusion of the inquiry, it was held by the disciplinary authority that charge of negligence is proved against the respondent workman and imposed punishment of withholding of five increments with permanent future effect. Being aggrieved and dissatisfied with the same, the respondent workman preferred appeal before the departmental appellate authority and the

Departmental Appellate Authority reduced the said punishment from withholding of five yearly increments with permanent future effect to withholding of three yearly increments with future effect. Being aggrieved and dissatisfied with the same, the respondent workman raised industrial dispute challenging the order of punishment with regard to withholding of three increments with permanent future effect which was referred to the Industrial Tribunal, Rajkot for its adjudication which was numbered as Reference (IT) No.184 / 1997. Considering the evidence on record and considering the fact that cyclist has overtaken the stationery truck and he was coming from the opposite side and while overtaking the same, he came in front of the S.T.Bus and that S.T.Bus driver tried to and applied brakes and still, the cyclist dashed with the front portion of the S.T.Bus and he died. Having found that there was no negligence on the part of the respondent workman driver and that cyclist who had all of sudden overtook the stationery truck, was negligent, the Industrial Tribunal interference with the order of punishment by holding that to some extent the respondent workman can be considered to be negligent and he should have taken more care and accordingly exercising the powers under Section-11-A of the Industrial Dispute Act, interfered with the order of punishment by reducing to withholding of one increment with future permanent effect and not paying any arrears from the date of

passing of the original punishment order in the year 1995 till passing of the award due to reduction of the penalty. Being aggrieved and dissatisfied with the aforesaid judgment and award passed by the Industrial Tribunal, Rajkot dated 15th March, 2005 passed in Reference (IT) No.184 of 1997, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

2. Ms.Sejal Mandavia, learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that if the respondent workman driver had taken more care and had driven the bus slowly, in that case, the accident would not have taken place and due to the accident one cyclist has died and S.T.Corporation petitioner herein was required to pay the amount of Rs.2,69,069/- by way of compensation pursuant to the judgment and award passed by the Motor Accident Claims Tribunal concerned. Therefore, she has submitted that in the fact and circumstances of the case, the Industrial Tribunal ought not to have interfered with the order of punishment imposed by the authority which was only for withholding of three yearly increments with permanent future effect and therefore, it is requested to allow the present special civil application.

3. Per contra, Shri R.P.Mankad, learned advocate appearing on behalf of the respondent workman has supported the judgment and award passed by the Industrial Tribunal. He has submitted that in fact, there was no negligence on the part of the respondent workman and in fact, the cyclist came all of sudden from the opposite side by overtaking the stationery truck and in fact, the respondent workman applied brake, still the cycle dashed with the front portion of the bus and unfortunately he died and considering the aforesaid evidence, when the Industrial Tribunal has found that imposition of punishment of withholding of three increments with permanent effect is not commensurate with the allegation and the charge leveled and therefore, it is requested not to interfere tithe same by exercising the powers under Articles 226 and 227 of the Constitution of India. He has further submitted that so far as so called judgment and award passed by the MACT concerned, nothing is on record and even the same was not on record before the labour court and therefore, the same may not be considered at this stage. In view of aforesaid submissions, it is requested to dismiss the present special civil application.

4. Heard learned advocates appearing on behalf of the parties.

5. Form the evidence and the facts which are emerging from the record, it appears that there was stationery truck and one cyclist came behind the same all of sudden who tried to overtake the same and from the opposite side the bus was coming and the driver of S.T.Bus – respondent herein applied brakes, however, inspite of that, cyclist dashed with the front potion of the S.T.Bus and he succumbed to the injuries. There is nothing on record to show that S.T.Bus was in excessive speed. Considering the aforesaid facts and circumstances of the case, prima facie, it cannot be said that the respondent driver was solely responsible. However, considering the aforesaid facts and circumstances of the case and evidence on record and considering the fact that there might be some negligence on the part of the respondent workman and/ or due to the death of one person – cyclist due to the accident, the petitioner corporation might be required to pay compensation, the Industrial Tribunal has imposed the punishment of withholding of one increment with future effect and that not paid the difference on substitution of punishment from the date of passing of the original order in the year 1995, it cannot be said that in the facts and circumstances and evidence on record, the same is so perverse which requires interference by this Court exercising the powers under Articles

226 and 227 of the Constitution of India. It is also required to be noted that judgment and award passed by the MACT concerned is not on record and the same was also not on record before the Industrial Court, therefore, in absence of the judgment and award of the MAC Tribunal alleged to have held the respondent workman driver negligent, the same cannot be considered and take into consideration by this Court at this stage.

6. In view of above discussion and for the reasons stated hereinabove, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs.

[M.R.Shah, J.]

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